

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

Joyce D.,

Plaintiff,

v.

S.S.D.I. Appeals Council,

Defendant.

Case No. 2:23-cv-01344-DJA

Order

Plaintiff Joyce D.'s is proceeding *pro se* and *in forma pauperis*. (ECF No. 7). Plaintiff has filed an amended complaint. (ECF No. 10). Because the Court finds that Plaintiff's complaint has not met the basic requirements to satisfy screening, it dismisses her complaint without prejudice and with leave to amend. The Court finds these matters properly resolved without a hearing. LR 78-1.

I. Discussion.

A. Plaintiff's complaint does not pass the Court's screening.

Plaintiff's complaint does not meet the basic requirements to pass screening. When a plaintiff seeks leave to file a civil case *in forma pauperis*, the court will screen the complaint. *See* 28 U.S.C. § 1915(e). For social security appeals, judges in this district consider four requirements for complaints to satisfy screening. *See, e.g., Graves v. Colvin*, 2015 WL 357121, *2 (D. Nev. Jan. 26, 2015) (collecting cases). *See id.* First, the complaint must establish that administrative remedies were exhausted under 42 U.S.C. § 405(g) and that the plaintiff filed the application within 60 days after notice of the Social Security Commissioner's final decision. *See id.* Second, the complaint must indicate the judicial district in which the plaintiff resides. *See id.* Third, the complaint must state the nature of the plaintiff's disability and when the plaintiff claims to have become disabled. *See id.* Fourth, the complaint must contain a plain, short, and

1 concise statement identifying the nature of the plaintiff's disagreement with the determination
2 made by the Social Security Administration and show that the plaintiff is entitled to relief. *See id.*

3 Here, Plaintiff's complaint does not satisfy the fourth requirement. Regarding the first
4 requirement, Plaintiff claims to have received notice that the Commissioner's decision was final
5 on July 5, 2023. (*Id.* at 6). She also attaches an order from the Appeals Council denying her
6 request for review on July 5, 2023. (*Id.* at 12-14). She filed her initial application to proceed *in*
7 *forma pauperis* less than sixty days later. (ECF No. 1). Regarding the second requirement,
8 Plaintiff provides her address which shows that she lives in the jurisdictional bounds of this
9 Court. (ECF No. 10 at 5). Regarding the third requirement, although Plaintiff does not provide
10 the date she became disabled, the form she submitted does not require that information and
11 Plaintiff otherwise explains that she has pain, weakness, numbing, and issues with bowel
12 movements and attaches records showing that she has been diagnosed with degenerative disc
13 disease, bulging disc, and has undergone back surgery. (*Id.* at 6, 8).

14 However, Plaintiff's complaint does not satisfy the fourth requirement. She checks the
15 box indicating that "[t]he Commissioner found the following facts to be true, but these facts are
16 not supported by substantial evidence in the record." (*Id.* at 6). She then answers in a way that is
17 not responsive to the question, stating "I have more records to show that I'm still not well. I still
18 have issues. I still have pain, weakness, numbing and trouble with bowel movements after
19 surgery." (*Id.*). This does not explain her disagreement with the determination made by the
20 Social Security Administration. Instead, it simply outlines Plaintiff's ongoing problems.
21 Because Plaintiff's complaint does not meet each of the requirements, it does not satisfy
22 screening and the Court dismisses Plaintiff's complaint without prejudice and with leave to
23 amend.

24 Plaintiff also names the wrong party in her amended complaint. Under 20 C.F.R.
25 § 422.210(d), in cases where a claimant is seeking judicial review of a decision by an
26 administrative law judge, administrative appeals judge, or the Appeals Council under 20 C.F.R.
27 § 422.210(a), "the person holding the Office of the Commissioner shall, in his official capacity,
28 be the proper defendant." So, the proper Defendant in this action would be the current

1 Commissioner of Social Security, Martin O'Malley. Plaintiff must name the correct defendant in
2 any amended complaint.

3
4 **IT IS THEREFORE ORDERED** that the amended complaint (ECF No. 10) is
5 **dismissed without prejudice** for failure to state a claim upon which relief can be granted, with
6 leave to amend. Plaintiff will have until **October 9, 2024** to file an amended complaint if the
7 noted deficiencies can be corrected. If Plaintiff chooses to amend the complaint, Plaintiff is
8 informed that the Court cannot refer to a prior pleading (i.e., the original complaint) to make the
9 amended complaint complete. This is because, generally, an amended complaint supersedes the
10 original complaint. Local Rule 15-1(a) requires that an amended complaint be complete without
11 reference to any prior pleading. Once a plaintiff files an amended complaint, the original
12 complaint no longer serves any function in the case. Therefore, in an amended complaint, as in
13 an original complaint, each claim and the involvement of each Defendant must be sufficiently
14 alleged. **Failure to comply with this order will result in the recommended dismissal of this**
15 **case.**

16 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to send a copy of
17 this order to Plaintiff along with a copy of the Form Complaint for Review of a Social Security
18 Disability or Supplemental Security Income Decision.¹

19
20 DATED: September 9, 2024

21 
22 DANIEL J. ALBREGTS
23 UNITED STATES MAGISTRATE JUDGE
24
25
26

27 _____
28 ¹ This form can also be found online at <https://www.uscourts.gov/forms/pro-se-forms/complaint-review-social-security-decision>